



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Tri-States Service Company

**File:** B-223165

**Date:** August 25, 1986

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### **DIGEST**

1. Protest that solicitation's performance standard for repair of vehicles exceeds government's needs is denied as General Accounting Office will not upset an agency's decision as to its needs and the best means of accommodating them absent a clear showing that the decision was arbitrary or unreasonable since agency officials are most familiar with the conditions under which the supplies or services will be used.
2. Protest of various solicitation provisions is without merit where record indicates that provisions are reasonable.
3. Where solicitation sets forth detailed standards and agency indicates that any deviation from the listed standards would provide a basis for a contract price adjustment, protester has not shown that request for proposals does not adequately define track maintenance standards.

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### **DECISION**

Tri-States Service Company protests various requirements in request for proposals (RFP) No. DAAC79-86-R-0017, issued by the Red River Army Depot for installation support services. The RFP implements Office of Management and Budget (OMB) Circular A-76 and will be used to determine whether the services should be provided by a contractor or by government personnel.

Tri-States complains that the RFP's performance standard for repair of vehicles is too restrictive, that the RFP's limits for effluent for the sewage treatment plant cannot be met, that the government, not the contractor, should be required to operate the Depot's solid waste landfill and that the RFP does not establish standards for maintenance of its railroad tracks.

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## VEHICLE REPAIR

The RFP provides that the contractor is to accomplish all unscheduled vehicle maintenance within 2 work days after receipt of the vehicle. Tri-States contends that this level of performance exceeds the needs of the agency and is not currently being met by government personnel.

The Army says that it needs to have Depot vehicles repaired and in service within 2 days and states that a surveillance test of the current Depot employees and a review of the management study required by OMB Circular A-76 show that the proposed government staffing can accomplish the repairs within the RFP's standards. The protester questions the validity of the agency's study and argues that a 2-workday turnaround requirement will be impossible to achieve if the operation is staffed in a cost-effective manner.

When a protester challenges solicitation requirements as overstating the agency's needs, the agency must make a prima facie showing that the requirement is needed to meet its actual needs. If it does so, the burden shifts to the protester to show that the requirement is clearly unreasonable. Engine & Generator Rebuilders, B-220157, Jan. 13, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-1 CPD ¶ 27. We will not upset an agency's decision as to its needs and the best method of accommodating them absent a clear showing that the decision was arbitrary or unreasonable, since officials of the contracting agency are most familiar with the conditions under which the supplies or services will be used. ASC Pacific, Inc., B-217188, May 3, 1985, 85-1 CPD ¶ 497.

Here, the Depot indicates that it needs the 2-workday turnaround to maintain the usefulness of its vehicle fleet and, according to the agency, the standard is currently being met by the Depot's in-house staff.

Although Tri-States disputes the agency's conclusion that its in-house staff can meet the requirement, it has offered no evidence of that or that the agency's decision to require that vehicle downtime not exceed 2 working days was unreasonable. While the protester contends that the turnaround standard will be impossible to achieve when the operation is staffed in a cost-effective manner since an efficient maintenance operation dictates a certain level of backlog, the protester's mere disagreement with the agency over the cost effectiveness of employing a staff capable of complying with this requirement is not sufficient to establish that

the requirement is unreasonable. Romar Consultants, Inc., B-206489, Oct. 15, 1982, 82-2 CPD ¶ 339. We therefore have no basis upon which to object to this requirement.

#### SEWAGE TREATMENT PLANT

The protester objects to the solicitation requirement which specifies that the daily averages for biochemical oxygen demand (BOD) and for total suspended solids (TSS) shall not exceed 20 mg./L for the sewage treatment plant.

Tri-States contends that it is unlikely that these standards can be obtained during the winter months due to the inadequacy of the government furnished plant equipment, and proposes that the government accept liability for any violation of the waste water discharge standards which is attributable to the equipment's incapacity. The protester has submitted evidence that the Depot has been cited by the Environmental Protection Agency for violations of its National Pollution Discharge Elimination System permit over the course of the past 2 years.

The agency responds that the equipment located at the sewage treatment plant is capable of meeting the effluent conditions specified in the RFP. Although it admits that the biochemical oxygen demand was exceeded in September 1985, the agency says that there was insufficient evidence to establish that this was caused strictly by sewage treatment plant equipment. The agency also points out that the violations cited by the protester do not pertain to the effluent limitations for TSS and BOD levels at the sewage treatment plant.

While Tri-States has presented evidence that standards for BOD and TSS have been violated in the past by the Depot it has not shown that the problems were caused by the sewage treatment plant equipment. Consequently, we see no reason for us to interfere with the agency's inclusion of the effluent standard for the operation of the sewage treatment plant in the RFP.

#### SOLID WASTE LANDFILL

The RFP calls upon the contractor to operate and maintain all landfill (refuse disposal) areas and to construct new landfill areas as needed, in accordance with all applicable local, state, and federal laws. The protester theorizes that solid waste could become hazardous waste due to chemical

interaction during degradation, and that a contractor could thus incur financially devastating long-term liabilities despite its compliance with all applicable environmental guidelines. The protester further speculates that even if insurance could be obtained to cover this eventuality, it would distort the contractor/in-house cost comparison since the government acts as a self insurer. The protester asks that the Depot remove the solid waste landfill operation requirement from the solicitation or in the alternative relieve the contractor of both short and long term liability provided the operation is conducted in accordance with current legal requirements.

First, it is not clear to us, and the protester has offered no evidence, that non-hazardous waste can decompose into hazardous waste. Secondly, the protester incorrectly assumes that because the government acts as a self-insurer, an in-house cost proposal need not reflect insurance costs. The OMB Cost Comparison Handbook recognizes that operation of any government activity involves risks and potential costs from casualty losses and liability claims which are normally covered by insurance in the private sector. Because the government is primarily self-insured and must pay for each loss incurred, the handbook sets forth formulae to be used in the computation of potential liabilities. Thus, the agency will have to include an estimate for liability losses in its in-house cost proposal. See Contract Services Co., Inc., B-210796, Aug. 29, 1983, 83-2 CPD ¶ 268.

#### RAILROAD TRACK

The protester objects finally to the RFP requirement that the contractor maintain and repair the Depot railroad system. The RFP states in part:

"Depot tracks are designated as Class 2 tracks IAW the Federal Railroad Administration 'Track Safety Standards.' However, depot tracks shall be maintained to higher maintenance standards than the minimum track safety standards. The maintenance standards to be utilized will be determined by the KO/COR . . . ."

The protester contends that 30 percent of the existing track does not meet the minimum safety standards for Class 2 tracks and complains that no firm holding a firm-fixed-price

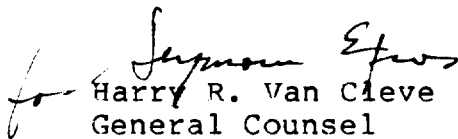
contract can be expected to meet subjective maintenance standards "to be arbitrarily established by the agency after award."

The agency disputes the protester's allegation that 30 percent of the existing track does not meet the minimum track safety standards and the protester has produced no evidence in support of its position.

The agency says that despite the cited introductory language, the specific standards for track maintenance are set forth in the subparagraphs under RFP Section 7.11. For example, subparagraph 7.11.9 contains the standards for rail maintenance, 7.11.11 deals with track bolts, 7.11.13 with track spikes and 7.11.16 with ties. The agency also notes that any deviation from these listed standards would provide a basis for a contract price adjustment.

The protester has submitted no response to the agency's statement and we see nothing in the record which would cause us to object to this requirement.

The protest is denied.

  
for Harry R. Van Cleave  
General Counsel